

Calendar No. 557

103D CONGRESS
2D SESSION

S. 2369

A BILL

To grant the consent of the Congress to amendments to the Central Midwest Interstate Low-Level Radioactive Waste Compact.

AUGUST 11, 1994

Reported without amendment

Calendar No. 557

103^D CONGRESS
2^D SESSION

S. 2369

To grant the consent of the Congress to amendments to the Central Midwest
Interstate Low-Level Radioactive Waste Compact.

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 1994

Mr. SIMON (for himself, Ms. MOSELEY-BRAUN, and Mr. FORD) introduced the
following bill; which was read twice and referred to the Committee on the
Judiciary

AUGUST 11, 1994

Reported by Mr. BIDEN, without amendment

A BILL

To grant the consent of the Congress to amendments to
the Central Midwest Interstate Low-Level Radioactive
Waste Compact.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Central Midwest Inter-
5 state Low-Level Radioactive Waste Compact Amendments
6 Consent Act of 1994”.

1 **SEC. 2. CONSENT OF CONGRESS TO COMPACT AMEND-**
2 **MENTS.**

3 In accordance with section 4(a)(2) of the Low-Level
4 Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)),
5 the consent of the Congress is hereby given to amend-
6 ments made by the States of Illinois and Kentucky to the
7 Central Midwest Interstate Low-Level Radioactive Waste
8 Compact, which compact was consented to by the Con-
9 gress in section 224 of the Omnibus Low-Level Radio-
10 active Waste Interstate Compact Consent Act (Pub. L.
11 99-240; 42 U.S.C. 2021 note). The amendments to which
12 such consent is given are substantially as follows:

13 (1) The 2d undesignated paragraph of article I
14 of the compact is amended to read as follows:

15 “The states party to this compact recognize that the
16 Congress of the United States, by enacting the Low-Level
17 Radioactive Waste Policy Act (42 U.S.C. 2021), has pro-
18 vided for and encouraged the development of low-level ra-
19 dioactive waste compacts as a tool for managing such
20 waste. The party states also recognize that the manage-
21 ment of low-level radioactive waste is handled most effi-
22 ciently on a regional basis; and, that the safe and efficient
23 management of low-level radioactive waste generated with-
24 in the region requires that sufficient capacity to manage
25 such waste be properly provided.”.

1 (2) Section (k) of article II of the compact is
2 amended to read as follows:

3 “(k) ‘Low-level radioactive waste’ or ‘waste’ means
4 radioactive waste not classified as (1) high-level radio-
5 active waste, (2) transuranic waste, (3) spent nuclear fuel,
6 or (4) by-product material as defined in Section 11e. (2)
7 of the Atomic Energy Act of 1954. This definition shall
8 apply notwithstanding any declaration by the federal gov-
9 ernment, a state or any regulatory agency that any radio-
10 active material is exempt from any regulatory control.”.

11 (3) Section (q) of article II of the compact is
12 amended to read as follows:

13 “(q) ‘Regional facility’ means any facility as defined
14 in Article II(f) that is (1) located within the region, and
15 (2) established by a party state pursuant to designation
16 of that state as a host state by the Commission.”.

17 (4) Sections (a) and (b) of article III of the
18 compact are amended to read as follows:

19 “(a) There is created the Central Midwest Interstate
20 Low-Level Radioactive Waste Commission. Upon the eligi-
21 ble states becoming party states, the Commission shall
22 consist of two voting Commissioners from each state eligi-
23 ble to be designated a host state under Article VI(b), one
24 voting Commissioner from any other party state, and for
25 each regional facility, one nonvoting Commissioner who is

1 an elected official of local government and a resident of
2 the county where that regional facility is located. The Gov-
3 ernor of each party state shall notify the Commission in
4 writing of its Commissioners and any alternates.

5 “(b) Each voting Commissioner is entitled to one
6 vote. No action of the Commission is binding unless a ma-
7 jority of the voting membership casts its vote in the af-
8 firmative. In addition, no agreement by the Commission
9 under Article III(i)(1), Article III(i)(2), or Article III(i)(3)
10 is valid unless all voting Commissioners from the party
11 state in which the facility where waste would be sent is
12 located cast their votes in the affirmative.”.

13 (5) Sections (d) and (e) of article III of the
14 compact are amended to read as follows:

15 “(d) The Commission shall meet at least once annu-
16 ally and shall also meet upon the call of any voting Com-
17 missioner.

18 “(e) All meetings of the Commission and its des-
19 ignated committees shall be open to the public with rea-
20 sonable advance notice. The Commission may, by majority
21 vote, close a meeting to the public for the purpose of con-
22 sidering sensitive personnel or legal strategy matters.
23 However, all Commission actions and decisions shall be
24 made in open meetings and appropriately recorded. A roll

1 call may be required upon request of any voting Commis-
2 sioner.”.

3 (6) Section (g) of article III of the compact is
4 amended to read as follows:

5 “(g) The Office of the Commission shall be in Illinois.
6 The Commission may appoint or contract for and com-
7 pensate such staff necessary to carry out its duties and
8 functions. The staff shall serve at the Commission’s pleas-
9 ure with the exception that staff hired as the result of
10 securing federal funds shall be hired and governed under
11 applicable federal statutes and regulations. In selecting
12 any staff, the Commission shall assure that the staff has
13 adequate experience and formal training to carry out the
14 functions assigned to it by the Commission.”.

15 (7) Sections (i) and (j) of article III of the com-
16 pact are amended to read as follows:

17 “(i) The Commission may:

18 “(1) Enter into an agreement with any person
19 to allow waste from outside the region to be disposed
20 of at facilities in the region. However, no such
21 agreement shall be effective unless and until ratified
22 by a law enacted by the party state to which the
23 waste would be sent for disposal.

24 “(2) Enter into an agreement with any person
25 to allow waste described in Article VII(a)(6) to be

1 treated, stored, or disposed of at regional facilities.
2 However, no such agreement shall be effective unless
3 and until ratified by a law enacted by the host state
4 of the regional facility to which the waste would be
5 sent for treatment, storage, or disposal.

6 “(3) Enter into an agreement with any person
7 to allow waste from outside the region to be treated
8 or stored at facilities in the region. However, any
9 such agreement shall be revoked as a matter of law
10 if, within one year of the effective date of the agree-
11 ment, a law is enacted ordering such revocation by
12 the party state to which the waste would be sent for
13 treatment or storage.

14 “(4) Approve, or enter into an agreement with
15 any person for, the export of waste from the region.

16 “(5) Approve the disposal of waste generated
17 within the region at a facility in the region other
18 than a regional facility, subject to the limitations of
19 Articles V(f) and VII(a)(6).

20 “(6) Require that waste generated within the
21 region be treated or stored at available regional fa-
22 cilities, subject to the limitations of Articles V(f),
23 VII(a)(3) and VII(a)(6).

24 “(7) Appear as an intervenor or party in inter-
25 est before any court of law or any federal, state or

1 local agency, board or commission in any matter re-
2 lated to waste management. In order to represent its
3 views, the Commission may arrange for any expert
4 testimony, reports, evidence or other participation.

5 “(8) Review the emergency closure of a regional
6 facility, determine the appropriateness of that clo-
7 sure, and take whatever actions are necessary to en-
8 sure that the interests of the region are protected,
9 provided that a party state with a total volume of
10 waste recorded on low-level radioactive waste mani-
11 fests for any year that is less than 10 percent of the
12 total volume recorded on such manifests for the re-
13 gion during the same year shall not be designated a
14 host state or be required to store the region’s waste.
15 In determining the 10 percent exclusion, there shall
16 not be included waste recorded on low-level radio-
17 active waste manifests by a person whose principal
18 business is providing a service by arranging for the
19 collection, transportation, treatment, storage or dis-
20 posal of such waste.

21 “(9) Take any action which is appropriate and
22 necessary to perform its duties and functions as pro-
23 vided in this compact.

24 “(10) Suspend the privileges or revoke the
25 membership of a party state.

1 “(j) The Commission shall:

2 “(1) Submit within 10 days of its execution to
3 the governor and the appropriate officers of the leg-
4 islative body of the party state in which any affected
5 facility is located a copy of any agreement entered
6 into by the Commission under Article III(i)(1), Arti-
7 cle III(i)(2) or Article III(i)(3).

8 “(2) Submit an annual report to, and otherwise
9 communicate with, the governors and the appro-
10 priate officers of the legislative bodies of the party
11 states regarding the activities of the Commission.
12 The annual report shall include a description of the
13 status of the activities taken pursuant to any agree-
14 ment entered into by the Commission under Article
15 III(i)(1), Article III(i)(2) or Article III(i)(3) and any
16 violation of any provision thereof, and a description
17 of the source, volume, activity, and current status of
18 any waste from outside the region or waste described
19 under Article VII(a)(6) that was treated, stored, or
20 disposed of in the region in the previous year.

21 “(3) Hear, negotiate, and, as necessary, resolve
22 by final decision disputes which may arise between
23 the party states regarding this compact.

1 “(4) Adopt and amend, as appropriate, a re-
2 gional management plan that plans for the establish-
3 ment of needed regional facilities.

4 “(5) Adopt an annual budget.”.

5 (8) Sections (o) and (p) of article III of the
6 compact are amended to read as follows:

7 “(o) The Commission is a legal entity separate and
8 distinct from the party states and is liable for its actions
9 as a separate and distinct legal entity. Commissioners are
10 not personally liable for actions taken by them in their
11 official capacity.

12 “(p) Except as provided under Article III(n), Article
13 III(o), Article VI(p) and Article VI(q), nothing in this
14 compact alters liability for any action, omission, course of
15 conduct or liability resulting from any causal or other rela-
16 tionships.”.

17 (9) Sections (b) and (c) of article V of the com-
18 pact are amended to read as follows:

19 “(b) Other than the provisions of Article V(f) and
20 VII(a)(6), each party state has the right to have all wastes
21 generated within borders managed at regional facilities.
22 This right shall be subject to the provisions of this Com-
23 pact. All party states have an equal right of access to any
24 facility outside the region made available to the region by

1 any agreement entered into by the Commission pursuant
2 to Article III(i)(4).

3 “(c) Party states or generators may negotiate for the
4 right of access to a facility outside the region and may
5 export waste outside the region subject to Commission ap-
6 proval under Article III(i)(4).”.

7 (10) Section (f) of article V of the compact is
8 amended to read as follows:

9 “(f) Waste originating from the Maxey Flats nuclear
10 waste disposal site in Fleming County, Kentucky shall not
11 be shipped to any facility in Illinois for storage, treatment
12 or disposal. Disposition of these wastes shall be the sole
13 responsibility of the Commonwealth of Kentucky and such
14 waste shall not be subject to the provisions of Articles
15 IX(b)(3) and (4) of this compact.”.

16 (11) Section (b) of article VI of the compact is
17 amended to read as follows:

18 “(b) If all regional facilities required by the regional
19 management plan are not developed pursuant to Article
20 VI(a), or upon notification that an existing regional facil-
21 ity will be closed, the Commission may designate a party
22 state as a host state. A party state shall not be designated
23 as a host state for any regional facility under this Article
24 VI(b) unless that state’s total volume of waste recorded
25 on low-level radioactive waste manifests for any year is

1 more than 10% of the total volume recorded on such mani-
2 fests for the region during the same year. In determining
3 the 10% exclusion, there shall not be included waste re-
4 corded on low-level radioactive waste manifests by a per-
5 son whose principal business is providing a service by ar-
6 ranging for the collection, transportation, treatment, stor-
7 age or disposal of such waste, or waste described in Article
8 VII(a)(6).”.

9 (12) Section (c) of article VI of the compact is
10 repealed.

11 (13) Section (e) of article VI of the compact is
12 amended to read as follows:

13 “(e) Any party state designated as a host state may
14 request the Commission to relieve that state of the respon-
15 sibility to serve as a host state. The Commission may re-
16 lieve a party state of this responsibility upon a showing
17 by the requesting party state that no feasible potential re-
18 gional facility site of the type it is designated to host exists
19 within its borders or for other good cause shown and con-
20 sistent with the purposes of this Compact.”.

21 (14) Sections (l) and (m) of article VI of the
22 compact are amended to read as follows:

23 “(l) A host state intending to close a regional facility
24 located within its borders shall notify the Commission in
25 writing of its intention and the reasons. Notification shall

1 be given to the Commission at least five years prior to
2 the intended date of closure. This Section shall not pre-
3 vent an emergency closing of a regional facility by a host
4 state to protect its air, land and water resources and the
5 health and safety of its citizens. However, a host state
6 which has an emergency closing of a regional facility shall
7 notify the Commission in writing within 3 working days
8 of its action and shall, within 30 working days of its ac-
9 tion, demonstrate justification for the closing.

10 “(m) If a regional facility closes before an additional
11 or new facility becomes operational, waste generated with-
12 in the region may be shipped temporarily to any location
13 agreed on by the Commission until a regional facility is
14 operational, provided that the region’s waste shall not be
15 stored in a party state with a total volume of waste re-
16 corded on low-level radioactive waste manifests for any
17 year which is less than 10% of the total volume recorded
18 on the manifests for the region during the same year. In
19 determining the 10% exclusion, there shall not be included
20 waste recorded on low-level radioactive waste manifests by
21 a person whose principal business is providing a service
22 by arranging for the collection, transportation, treatment,
23 storage or disposal of such waste, or waste described in
24 Article VII(a)(6).”.

1 (15) Sections (o) through (q) of article VI of
2 the compact are amended to read as follows:

3 “(o) The host state shall create an ‘Extended Care
4 and Long-Term Liability Fund’ and shall allocate suffi-
5 cient fee revenues, received pursuant to Article VI(i), to
6 provide for the costs of:

7 “(1) decommissioning and other procedures re-
8 quired for the proper closure of a regional facility;

9 “(2) monitoring, inspection and other proce-
10 dures required for the proper extended care of a re-
11 gional facility;

12 “(3) undertaking any corrective action or clean-
13 up necessary to protect human health and the envi-
14 ronment from radioactive releases from a regional
15 facility; and

16 “(4) compensating any person for medical and
17 other expenses incurred from damages to human
18 health, personal injuries suffered from damages to
19 human health and damages or losses to real or per-
20 sonal property, and accomplishing any necessary cor-
21 rective action or clean-up on real or personal prop-
22 erty caused by radioactive releases from a regional
23 facility; the host state may allocate monies in this
24 Fund in amounts as it deems appropriate to pur-
25 chase insurance or to make other similar financial

1 protection arrangements consistent with the pur-
2 poses of this Fund; this Article VI(n) shall in no
3 manner limit the financial responsibilities of the site
4 operator under Article VI(o), the party states under
5 Article VI(p), or any person who sends waste to a
6 regional facility, under Article VI(q).

7 “(p) The operator of a regional facility shall purchase
8 an amount of property and third-party liability insurance
9 deemed appropriate by the host state, pay the necessary
10 periodic premiums at all times and make periodic pay-
11 ments to the Extended Care and Long-Term Liability
12 Fund as set forth in Article VI(n) for such amounts as
13 the host state reasonably determines is necessary to pro-
14 vide for future premiums to continue such insurance cov-
15 erage, in order to pay the costs of compensating any per-
16 son for medical and other expenses incurred from damages
17 to human health, personal injuries suffered from damages
18 to human health and damages or losses to real or personal
19 property, and accomplishing any necessary corrective ac-
20 tion or clean-up on real or personal property caused by
21 radioactive releases from a regional facility. In the event
22 of such costs resulting from radioactive releases from a
23 regional facility, the host state should, to the maximum
24 extent possible, seek to obtain monies from such insurance

1 prior to using monies from the Extended Care and Long-
2 Term Liability Fund.

3 “(q) All party states shall be liable for the cost of
4 extended care and long-term liability in excess of monies
5 available from the Extended Care and Long-Term Liabil-
6 ity Fund, as set forth in Article VI(n) and from the prop-
7 erty and third-party liability insurance as set forth in Arti-
8 cle VI(o). A party state may meet such liability for costs
9 by levying surcharges upon generators located in the party
10 state. The extent of such liability shall be based on the
11 proportionate share of the total volume of waste placed
12 in the regional facility by generators located in each such
13 party state. Such liability shall be joint and several among
14 the party states with a right of contribution between the
15 party states. However, this Section shall not apply to a
16 party state with a total volume of waste recorded on low-
17 level radioactive waste manifests for any year that is less
18 than 10% of the total volume recorded on such manifests
19 for the region during the same year.”.

20 (16) Sections (d) through (q) of article VI of
21 the compact are redesignated as sections (c) through
22 (p), respectively.

23 (17) Article VI of the compact is amended by
24 adding at the end the following new section:

1 “(q) Any person who sends waste from outside the
2 region or waste described in Article VII(a)(6) for treat-
3 ment, storage or disposal at a regional facility shall be
4 liable for the cost of extended care and long-term liability
5 of that regional facility in excess of the monies available
6 from the Extended Care and Long-Term Liability Fund
7 as set forth in Article VI(n) and from the property and
8 third-party liability insurance as set forth in Article VI(o).
9 The extent of the liability for the person shall be based
10 on the proportionate share of the total volume of waste
11 sent by that person to the regional facility.”.

12 (18) Section (a)(6) of article VII of the com-
13 pact is amended to read as follows:

14 “(6) establishes any right to the treatment,
15 storage or disposal at any facility in the region or
16 provides any authority to prohibit export from the
17 region of waste that is owned or generated by the
18 United States Department of Energy, owned or gen-
19 erated by the United States Navy as a result of the
20 decommissioning of vessels of the United States
21 Navy, or owned or generated as the result of any re-
22 search, development, testing or production of any
23 atomic weapon; or”.

24 (19) Section (d) of article VII of the compact
25 is amended to read as follows:

1 “(d) No person who provides a service by arranging
2 for collection, transportation, treatment, storage or dis-
3 posal of waste from outside the region shall be allowed
4 to dispose of any waste, regardless of origin, in the region
5 unless specifically permitted under an agreement entered
6 into by the Commission in accordance with the require-
7 ments of Article III(i)(1).”.

8 (20) Section (c) of article VIII of the compact
9 is amended to read as follows:

10 “(c) The Commission is formed upon the appoint-
11 ment of the Commissioners and the tender of the member-
12 ship fee payable to the Commission by the eligible states.
13 The Governor of Illinois shall convene the initial meeting
14 of the Commission. The Commission shall cause legislation
15 to be introduced in the Congress which grants the consent
16 of the Congress to this compact, and shall take action nec-
17 essary to organize the Commission and implement the pro-
18 visions of this compact.”.

19 (21) Section (e) of article VIII of the compact
20 is amended to read as follows:

21 “(e) This compact becomes effective July 1, 1984, or
22 at any date subsequent to July 1, 1984, upon enactment
23 by the eligible states. However, Article IX(b) shall not
24 take effect until the Congress has by law consented to this
25 compact. The Congress shall have an opportunity to with-

1 draw such consent every 5 years. Failure of the Congress
2 affirmatively to withdraw its consent has the effect of re-
3 newing consent for an additional 5 year period. The con-
4 sent given to this compact by the Congress shall extend
5 to the power of the region to ban the shipment of waste
6 into the region pursuant to Article III(i)(1) and to pro-
7 hibit exportation of waste generated within the region
8 under Article III(i)(4).”.

9 (22) Section (b) of article IX of the compact is
10 amended to read as follows:

11 “(b) Unless authorized by the Commission pursuant
12 to Article III(i), or otherwise provided in this compact,
13 after January 1, 1986 it is a violation of this compact:

14 “(1) for any person to deposit at a facility in
15 the region waste from outside the region;

16 “(2) for any facility in the region to accept
17 waste from outside the region;

18 “(3) for any person to export from the region
19 waste that is generated within the region;

20 “(4) for any person to dispose of waste at a fa-
21 cility other than a regional facility;

22 “(5) for any person to deposit at a regional fa-
23 cility waste described in Article VII(a)(6); or

24 “(6) for any regional facility to accept waste de-
25 scribed in Article VII(a)(6).”.

1 (23) Article IX of the compact is amended by
2 redesignating sections (c) and (d) as sections (d)
3 and (e), respectively, and by inserting after section
4 (b) the following new section:

5 “(c) It is a violation of this compact for any person
6 to treat or store waste at a facility other than a regional
7 facility if such treatment or storage is prohibited by the
8 Commission under Article III(i)(6).”.

S 2369 RS——2